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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,634	10/15/2001	Kiyofusa Egashira	JP920000319US1	3272

7590 07/07/2005  
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 Albany,, NY 12207

EXAMINER

POND, ROBERT M

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 07/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/977,634

Applicant(s)

EGASHIRA ET AL.

Examiner

Robert M. Pond

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/27/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection.

Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on 21 April 2005 has been entered.

### ***Response to Amendment***

The Applicant amended claims 4 and 9. All pending claims (1-10) were examined in this non-final office action.

### ***Response to Arguments***

#### **Rejection under 35 USC 103**

Applicant's arguments, see Remarks, filed 21 April 2005, with respect to the rejection(s) of claim(s) 1-10 under 35 USC 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view Hambrecht as noted below.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. **Claims 1-3 and 6-8 are rejected under 35 USC 102(e) as being anticipated by Hambrecht et al. (US 6,629,082, hereinafter referred to as “Hambrecht”).**

Hambrecht teaches all the limitation of claims 1-3 and 6-8. For example, Hambrecht discloses a system and method for determining the final offering price and allocations of a commodity (e.g. stock). The auction system ranks bids from highest price to lowest price, and further discloses accumulating the quantity of the commodity starting with the highest priced bid price (see at least col. 1, lines 30-51). Hambrecht further discloses:

- Obtaining supply information from at least one supplier and storing:  
Commodity (e.g. stock and number of shares) supplied by one or more entities; system maintains offer information (see at least col. 1, lines 42-45).
- Receiving purchase wish information and storing: Investors submit bids (see at least col. 1, lines 30-50).

- Predetermined time period: Closing date of auction (see at least col. 3, lines 52-55; col. 4, line 45; col. 6, lines 4-8).
- Selecting optimum combination; comparing the desired purchase price and desired purchase quantity: Ranks bids in descending order, accumulates rolling quantity for commodity allocation (see at least col. 1, lines 39-43); system sets commodity pricing considered optimal for buyers and sellers; allocation algorithm maximizes share value; (see at least col. 1, lines 24-26; col. 2, lines 55-65).
- Transmitting notification: notification on bids (see at least col. 14, lines 7-10); funds from successful bidder accounts transferred (please note: definitive notification) (see at least col. 6, lines 63-65).

Pertaining to system Claims 6-8

Rejection of claims 6-8 is based on similar rationale as noted above.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**2. Claims 4-5 and 9-10 rejected under 35 USC 103(a) as being unpatentable over Hambrecht (US 6,629,082) in view of Official Notice (regarding old and well-known in the arts)**

Hambrecht teaches all the above as noted under the 102(e) rejection and teaches a) optimizing value for sellers and buyers, b) maximizing share value, and c) realizing significant savings over the underwriting discounts charged in typical offerings, but does not specifically disclose calculating gross profit. The Examiner takes the position that it is old and well-known in the arts to calculate gross profit as claimed by calculating total sales and subtracting from total sales the total cost of the item sold. Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the method of Hambrecht to disclose gross profit calculations as taught by Official Notice, in order to quantify gross profit for sellers, and thereby attract sellers to the service.

**Pertaining to system Claims 9-10**

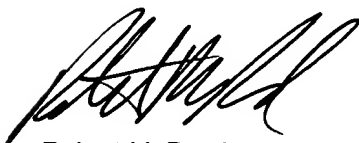
Rejection of Claims 9-10 is based on similar rationale as noted above.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Pond whose telephone number is 571-272-6760. The examiner can normally be reached on 8:30AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Wynn Coggins can be reached on 571-272-7159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robert M. Pond  
Primary Examiner  
June 29, 2005